

APPENDIX A

AGRICULTURAL STEWARDSHIP ACT

AGRICULTURAL STEWARDSHIP ACT

The following is the latest version of the Agricultural Stewardship Act, complete with the amendments made to the Act in the 2000 session of the General Assembly and signed by the Governor on April 9, 2000.

§ 10.1-559.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Agricultural activity" means any activity used in the production of food and fiber, including, but not limited to, farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural stewardship plan" or "plan" means a site-specific plan for an agricultural activity to manage, through use of stewardship measures, one or more of the following: soil, water, plants, plant nutrients, pest controls, wastes, and animals.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Complaint" means an allegation made by any person to the Commissioner that an owner's or operator's agricultural activity is creating or, if not changed, will create pollution and that states the location and nature of such agricultural activity.

"Informal fact-finding conference" means an informal fact-finding conference conducted in accordance with § 9-6.14:11.

"Operator" means any person who exercises managerial control over any agricultural activity.

"Owner" means any person who owns land on which an agricultural activity occurs.

"Person" means an individual, a partnership, an association, a corporation or any government or unit of government.

"Pollution" means any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins.

"State waters" means all water, on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Stewardship measures" or "measures" means measures for controlling the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution which reflect the pollutant reduction achievable through the application of the best available nonpoint pollution control methods, technologies, processes, siting criteria, operating methods or other alternatives. "Stewardship measures" or "measures" includes (i) agricultural water quality protection management measures described in the Virginia Agricultural Best Management Practices Manual and (ii) agricultural water quality protection management measures contained in the United States Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide.

§ 10.1-559.2. Exclusions from article.

This article shall not apply to any agricultural activity to which (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of this title or (ii) a permit issued by the State Water Control Board, applies.

§ 10.1-559.3. Complaint; investigation; agricultural stewardship plan.

- A. After April 1, 1997, upon receiving a complaint, unless the complaint was made anonymously, the Commissioner shall request that the directors of the district in which the land lies determine the validity of the information within twenty-one days. The Commissioner may investigate or ask the directors of the district to investigate an anonymous complaint.
- B. The district chairman may, on behalf of the district, act upon or reject the Commissioner's request. If the district declines to act, it shall within five days so advise the Commissioner, who shall determine the validity of the complaint.
- C. If, after investigating a complaint, the Commissioner determines that substantial evidence exists to prove that an agricultural activity is creating or will create pollution, the Commissioner shall notify the owner or operator by registered mail, return receipt requested. If, after investigation, the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses, the Commissioner may forego any additional action. Copies of the notice shall be sent to the district in which the agricultural activity is located. The notice shall state that, within sixty days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan which includes stewardship measures needed to prevent or cease the pollution. The district shall review the plan and, if the plan includes such measures, the Commissioner shall approve the plan within thirty days after he receives it. Upon approving the owner's or operator's plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved. The owner or operator shall begin implementing the approved agricultural stewardship plan within six months of the date on which the owner or operator received the notice that the agricultural activity is creating or will create pollution.
- D. The plan shall include an implementation schedule, and implementation of the plan shall be completed within a period specified by the Commissioner, based upon the seasons and other temporal considerations so that the period is that during which the possibility of success in establishment or construction of the measures required in the plan is the greatest, which shall not exceed eighteen months from receipt of notice. However, the Commissioner may grant an extension of up to 180 days if (1) a hardship exists and (ii) the request for an extension was made not later than sixty days before the scheduled completion date. The Commissioner shall, within thirty days of receiving the request, inform the owner or operator whether or not an extension has been granted.
- E. After implementing the approved plan according to the provisions of the chapter, the owner or operator shall maintain the stewardship measures established pursuant to the plan. The owner or operator may change the agricultural activity so long as the Commissioner is notified.
- F. If the Commissioner determines that substantial evidence does not exist to prove that an agricultural activity is creating or will create pollution or that any pollution was caused by unusual weather events or other exceptional circumstances or that the pollution is not a threat to human health, animal health or aquatic life or recreational or other beneficial uses, he shall inform the complainant and the owner or operator of his

determination. Upon approving the owner's or operator's agricultural stewardship plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved.

§ 10.1-559.4. Issuance of corrective orders.

A. If any owner or operator who has been issued a notice under § 10.1-559.3 fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures as provided in § 10.1-559.3, the Commissioner shall issue a corrective order to such owner or operator. The order shall require that such activity be accomplished within a stated period of time.

B. A corrective order issued pursuant to subsection A shall be issued only after an informal factfinding conference, with reasonable notice being given to the owner or operator, or both, of the time, place and purpose thereof, and shall become effective not less than five days after date of delivery to the last known address as provided in subsection C. The corrective order shall be suspended pending appeal by the recipient made within five days after delivery of such order to the last known address of the owner or operator.

C. The Commissioner shall mail a copy of the corrective order by certified mail, return receipt requested, sent to the last known address of the owner or operator, or by personal delivery by an agent of the Commonwealth.

D. Notwithstanding other provisions of this article, if the Commissioner determines that a recurring polluting condition which is the subject of an approved plan is occurring or that an emergency condition exists due to runoff from an agricultural activity which is causing or is likely to cause an imminent or substantial danger to (i) the public health, safety or welfare or to the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other beneficial uses, the Commissioner may issue, without advance notice, informal fact-finding conference or hearing, an emergency corrective order. Such order may direct the owner or operator of the agricultural activity, or both, to cease immediately all or part of the agricultural activity, and to implement specified stewardship measures or any necessary emergency measures within a stated period of time. Following the issuance of an emergency corrective order, the Commissioner shall provide the opportunity for a hearing or an informal fact-finding conference, after reasonable notice as to the time and place thereof, to the owner or operator, for the purpose of affirming, modifying, amending or canceling the emergency corrective order.

E. The Commissioner shall not issue a corrective order to any land owner or operator if the person is:

1. Actively implementing the agricultural stewardship plan which has been reviewed by the district in which the agricultural activity is located and approved by the Commissioner, or
2. Actively implementing stewardship measures that have failed to prevent pollution, if the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated.

§ 10.1-559.5. Right of entry; court enforcement.

A. The district or the Commissioner or his designee may enter land which is the subject of a complaint, after notice to the owner or operator, to determine whether the agricultural activity is causing or will cause pollution of state waters.

B. Upon failure of any owner or operator to allow the Commissioner or his designee entry in accordance with subsection A, to implement stewardship measures in the time specified in a corrective order, or to maintain

stewardship measures in accordance with subsection E of § 10.1559.3, the Commissioner may present to the circuit court of the county or city in which the land is located, a petition asking the court to require the owner or operator to allow the Commissioner or his designee entry or to carry out such measures within a specified time. If the owner or operator fails to implement the stewardship measures specified in the court order, the Commissioner or his representative may enter the land involved and implement the measures. The Commissioner shall have the authority to recover the costs of implementing the stewardship measures from the owner or operator.

§ 10.1-559.6. Appeal.

Decisions of the Commissioner may be appealed by persons aggrieved to the Virginia Soil and Water Conservation Board and thereafter to the circuit court in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). The imposition of any civil penalty shall be suspended pending such appeals.

§ 10.1-559.7. Penalties; injunctions; enforcement actions.

A. Any person violating § 10.1-559.4 or § 10.1-559.5 shall be subject to a civil penalty not to exceed 55.000 for every violation assessed by the Commissioner or Board. Each day the violation continues shall constitute a separate offense. Payments to satisfy such penalties shall be deposited in a nonreverting, special fund to be used by the Department of Conservation and Recreation to provide financial assistance to persons implementing measures specified in the Virginia Agricultural Best Management Practices Manual. No person who has been assessed a civil penalty under this section shall be eligible for such financial assistance until the violation has been corrected and the penalty paid.

B. In determining the amount of any penalty, factors to be considered shall include but not be limited to the willfulness of the violation, any history of noncompliance, the actions of the owner or operator in notifying, containing and cleaning up any discharge, the damage or injury to state waters or the impairment of its uses, and the nature and degree of injury to or interference with general health, welfare and property.

C. The Attorney General shall, upon request, bring an action for an injunction or other appropriate legal action on behalf of the Commissioner or Board to enforce the provisions of this article.

§ 10.1-559.8. Liens.

If a person who is required to pay a civil penalty under this chapter fails to do so, the Commissioner may transmit a true copy of the order assessing such penalty to the clerk of the circuit court of any county or city wherein it is ascertained that the person owing such penalty has any estate; and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be recorded, and shall index it in the name of the Commonwealth as well as in the name of the person owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property within such locality of the person owing the civil penalty in the amount of the civil penalty. The Commissioner and Board may collect civil penalties which are owed in the same manner as provided by law in respect to judgment of a court of record.

§ 10.1-559.9. Guidelines to be published by Commissioner, report.

A. In consultation with the districts, the Department and interested persons, the Commissioner shall develop guidelines for the implementation of this article. These guidelines shall address, among other things, the conduct of investigations, sources of assistance for owners and operators, and intergovernmental cooperation. Within ninety days of the effective date of this section, the Commissioner shall submit the proposed guidelines to the Registrar of Regulations for publication in the Virginia Register of Regulations. At least thirty days shall

be provided for public comment after the publication of the proposed guidelines. After the close of the public comment period, the Commissioner shall consider the comments that he has received and may incorporate any changes into the guidelines that he deems appropriate. He shall develop a written summary and analysis of the comments, which shall be made available to the public upon request. Thereafter, the Commissioner shall submit final guidelines for publication in the Register. The guidelines shall become effective on April 1, 1997. The Commissioner may alter the guidelines periodically after his proposed changes have been published in the Register and a public comment period has been provided.

B. The Commissioner shall compile a report by August 31 annually listing the number of complaints received, the nature of each complaint, the actions taken in resolution of each complaint, and any penalties which may have been assessed. The Commissioner shall have the discretion to exclude and keep confidential specific information regarding ongoing investigations. The Commissioner shall (1) provide the report to the Board, the Department and to every district, (ii) publish notice in the Virginia Register that the report is available, and (iii) make the report available to the public upon request.

§ 10.1-559.10. Local ordinances.

A. Any county, city or town may adopt an ordinance creating a complaint, investigation and agricultural stewardship plan development program. Ordinances adopted pursuant to this section may contain only provisions which parallel §§ 10.1-559.2 and 10.1-559.3. No such ordinance shall provide for the imposition of civil or criminal sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to implement a plan, the local governing body shall submit a complaint to the Commissioner as provided in

§ 10.1-559.3.

B. This section shall not apply to any ordinance (i) in existence on July 1, 1996, or (ii) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).

§ 10.1-559.11. Construction of article.

Nothing in this article shall be construed as duplicative of regulations governing agricultural practices under the Chesapeake Bay Preservation Act.

APPENDIX B

STEPS IN ADDRESSING ASA COMPLAINTS

STEPS IN ADDRESSING ASA COMPLAINTS

1. Commissioner's Office receives the complaint
2. Commissioner's Office informs District
3. District has five calendar days to inform the Commissioner's Office of their decision regarding whether or not they will investigate
4. Phone call or visit to inform farmer of complaint and the need to set up a time to investigate
5. Send letter to farmer to follow-up phone call along with information on ASA
6. Investigate complaint and report findings to Commissioner's Office within 21 days of receiving complaint
7. Commissioner's Office reviews investigation report, makes decision and contacts farmer (via certified mail) and District within 30 days
 - * unfounded – case dismissed and complainant contacted
 - * founded – farmer requested to complete the following steps
8. Farmer develops plan to address problem and sends copy to the Commissioner's Office and District within 60 days of receiving notice to develop plan
9. District reviews plan and sends comments to Commissioner's Office. If plan addresses problem then the Commissioner's Office will approve plan and notify farmer. This entire process must be completed within 30 days of receipt of plan from farmer (**PLAN REVIEW IS THE ONLY REQUIREMENT THAT DISTRICT PERFORMS IN ALL CASES**).
10. Commissioner's Office will notify complainant of action taken
11. Six months after notice to develop plan, Commissioner's Office will check to ensure that the farmer has begun implementing plan. (District may perform this duty if approved by the Commissioner's Office.) If implementation has not begun, corrective measures will be taken by the Commissioner's Office.
12. Plan implementation must be completed within 18 months or other periods as specified by the Commissioner's after notice to develop plan, at which time another farm visit to ensure compliance will be necessary. (Hardship extensions can be granted if correct process has been followed.)
13. Farmer maintains plan.

STEPS IN ADDRESSING AN ASA COMPLAINTS

1. Commissioner's Office receives complaint:

- Commissioner's Office reviews complaint and determines if the ASA has jurisdiction.
 - If not under ASA's jurisdiction, Commissioner dismisses complaint.
 - If under the ASA's jurisdiction, Commissioner determines whether investigation is necessary.

2. Commissioner's Office determines whether investigation is necessary:

- In cases with non-anonymous complaints, an investigation is required.
- In cases with anonymous complaints, the Commissioner has the option to investigate.

3. If investigation is needed:

- Commissioner's Office contacts local Soil and Water Conservation District and informs them of the complaint.
 - District has five days to decide if they will investigate or if they want the Commissioner's office to investigate.

(If the owner/operator has a preference on whether the District or the Commissioner's Office performs the investigation; we will try to accommodate the request.)

4. Contact the owner/operator to inform him or her of complaint and the need to investigate, followed by a letter as follow-up.

- Farmer options:
 - *Grant permission to enter land, or*
 - *Denies request to enter land*
- If farmer denies request to enter land, the Commissioner may see a court order and the farmer may be subject to civil penalties.
 - *Owner/operator can appeal to the court or the Soil and Water Board*

5. Investigate complaint and report findings to Commissioner's Office within 21 days of receiving complaint.

6. Commissioner's Office reviews investigation report and, if needed, gathers more information. Commissioner's Office then makes decision as to whether complaint is founded, then contacts farmer with findings (via certified mail) and the District within 30 days of receiving investigation report. (As this point, the farmer can obtain all information pertaining to the case.

- If complaint is unfounded
 - Action on complaint complete
 - Complainant contacted and informed on reasons complaint was unfounded.
- If complaint is founded – Finding is reviewed and discussed with farmer
 - *Farmer accepts decision, or*
 - *Farmer appeals decision to the Virginia Soil and Water Conservation Board*
 - Farmer accepts Board's decision, or
 - Farmer appears to local Circuit Court
- 7. **Farmer develops plan to address problem and sends copy to the Commissioner's Office and District within 60 days after receiving notice of investigation finds and of the need to develop a plan.**
- 8. District reviews plan and sends its recommendations to the Commissioner's Office.
- 9. Commissioner's Office reviews plan; District recommendations and notifies farmer.
 - Plan approved, and/or amended with conditions
 - Plan rejected
 - *Farmer develops new plan and repeats submittal process, or*
 - *Farmer appeals through the process described in item 5.*
- 10. Commissioner's Office contacts complainant, informs him or her of action taken, and plan implementation completion date.
- 11. Six months after farmer is notified that plan is necessary, Commissioner's Office will check to ensure that farmer has begun implementing plan.
 - Implementation has begun, or
 - Implementation has not begun
 - Commissioner institutes an informal fact-finding conference with the owner/operator
 - ASA requires Commissioner to issue a corrective order to farmer at this point
 - Owner/operator may be subject to civil penalties
 - *Owner/operator may appeal through same process as described in item 5.*
- 12. By the completion date, a site review will be conducted to ensure complete plan implementation.
 - Once plan is implemented, farmer is required to maintain
 - *Hardship cases can receive a 180-day extension if farmer's request is received 60 days prior to completion date and is approved by the Commissioner's Office.*
 - *Farmer can appeal through the same process described above in item 5.*

APPENDIX C

Steps To Consider During An Investigation

Steps to Consider During An Investigation

When beginning an investigation, it is likely to help if you keep several key questions in the back of your mind. These questions are:

1. What is pollutant (sediment, nutrient, pesticide or petroleum product) was the subject of the complaint?
2. What water body (stream, river, well, etc.) was the subject of the complaint?
3. Is there a physical barrier (e.g., buffer, berm, slope, etc.) that would help prevent the pollutant in question (soil, nutrients, pesticides or petroleum products) from reaching the stream, river or well?
4. Is the farmer using any BMPs that are designed to help prevent the pollutant in question from reaching the stream, river or well?

With these questions in mind, begin to assess the physical layout and the farmer's operation of the field, feedlot or pasture that is the subject of your investigation. Some things to assess are as follows (Use the ones that would be applicable to the pollutant that was the subject of the complaint):

- ❖ Is there evidence of erosion?
- ❖ What sources of nutrients are used or produced in the operation?
- ❖ What types of pesticides and petroleum products are used in the operation?
- ❖ If pesticides are used, are they water-soluble, evaporative or do they tend to bind to soil?
- ❖ What are the characteristics of the topography in relation to the water body?
 - Slope
 - Sink holes
 - Soil Types
 - Etc.
- ❖ Is there a buffer or other barrier between the site where the problem is alleged to be occurring and the water body?
- ❖ If there is a buffer, what are the characteristics for the buffer?
 - Mixed vegetation (trees and shrubs, etc.)
 - Grass
 - Etc.
- ❖ What condition is the buffer in?
 - Well vegetated
 - Killed areas
 - Eroded
 - Etc.

- ❖ Does the farmer use nutrient management practices, and if so what are they?
- ❖ Are stream banks eroded, and if so, what was the cause?
 - Natural causes
 - Livestock
 - Etc.
- ❖ Are BMPs used on the land, such as residue management, conservation tillage, sod waterways, animal waste system, hardened access, etc.?
- ❖ Are BMPs well maintained?
 - Is sod waterway or filter strip being filled with sediment?
 - Is animal waste storage facility emptied on schedule?
 - Etc.

This is not an all-inclusive list because there may be other site-specific and complaint-specific circumstances that you'll want to consider, but this gives you an idea of what to assess.

Taking what you've learned about this operation in your assessment, begin to answer the following questions:

- Can the alleged pollution even be a product of this farming operation?
- Is there a route from the field, feedlot or pasture that the pollutants would travel easily (e.g., unobstructed by a physical barrier) to the water body?
- Given the management of the field, feedlot or pasture and other factors, how large is the level of pollution that could be occurring (e.g., large, medium, minimal, none)?
- If there is a pollution occurring, could the pollution in question be occurring from natural causes (e.g., natural stream bank erosion)?
- If there is pollution occurring, was it caused by circumstances beyond the farmer's control?

Using your answers to these questions, you can begin to write up your investigation report and formulate your opinion regarding this case. If you have questions, feel free to contact Glenn Martin or Hunter Richardson at (804) 786-3538.

APPENDIX D

Agricultural Stewardship Act Forms

INVESTIGATION TRACKING CALENDAR
REGARDING THE AGRICULTURAL STEWARDSHIP ACT
Complaint No. _____

Completion Date	Required Completion Date	STEPS IN ADDRESSING COMPLAINTS
		1. Commissioner's office receives complaint (use Form 1)
		2. Letter from Commissioner's office to inform District of complaint (use Form 2)
		3. District sends response back within five day to Commissioner to inform if they will investigate the complaint (use Form 3)
		4. Phone calls to owner/operator to inform them of the complaint and inform of intent to investigate (use Form 4)
		5. Letter sent to owner/operator to follow-up on phone call as well as information on the Act (use Form 5)
		6. Investigate and report to Commissioner within 21 days (use Form 9)
		7. Commissioner's decision to landowner (via certified mail) and District within 30 days (use Form 6)
		8. Agricultural Stewardship Plan to Commissioner's Office within 60 days (can use Form 10)
		9. Agricultural Stewardship Plan reviewed by SWCD
		10. Agricultural Stewardship approval letter to owner/operator within 30 days (use Form 7)
		11. Letter to Complainant informing them of complaint status (use Form 8)
		12. Implementation of plan (begin within six months) 9 yes 9 no ≡ Site visit after six months to insure compliance ≡ If not implementing, Commissioner sends a corrective action by certified mail.
		13. Implementation completion not to exceed 18 months. ≡ Hardship cases can be extended by Commissioner for 180 days only if request is received 60 days before the final implementation or after a natural disaster occurs. Request received: _____ Granted date: _____ New Implementation Completion Date: _____
		14. Plan implementation complete
		15. Site inspection review

Today's Date _____

Complaint No. _____

FORM 1
COMPLAINT TRACKING FORM
AGRICULTURAL STEWARDSHIP ACT

Name of person receiving complaint: _____

1. Was the complaint made anonymously? Yes ____ No ____

If "Yes," what reason (if any) did complainant give for not wanting to give (his/her) name?

Note: If complainant would not give his/her name, Commissioner must make decision regarding whether or not to investigate.

If "No," provide complainant's name, mailing address, and phone number :

2. Does the complaint concern an agricultural activity? Yes ____ No ____

If "Yes," go to question 3. If "No," dismiss complaint and inform complainant that we have no jurisdiction over non-agricultural activities.

3. What was the agricultural activity? **Beef, Dairy, Poultry, Hogs, Horses, Cropland**, or other:

Did complainant say that the agricultural activity is causing or will cause water pollution?

Yes _____ No _____

If "Yes," go to question 4. If "No," dismiss complaint and inform complainant that we have jurisdiction only over complaints concerning water pollution.

4. What is the nature of the alleged water pollution?

Could this pollution have been caused or be caused by sedimentation, nutrient enrichment or toxins from this agricultural activity?

Yes ____ No ____ Uncertain ____

If "Yes," go to question 5. If "Uncertain," go to question 5. If "No," dismiss complaint and inform complainant that we have jurisdiction only over complaints concerning water pollution caused or threatened by sedimentation nutrient enrichment and toxins coming from agricultural activities.

5. To the best of your knowledge, is this specific agricultural activity covered by a permit (e.g., VPA, VPDES, etc.) issued by the State Water Control Board/ Department of Environmental Quality?

Yes ____ No ____ Uncertain ____

NOTE: "Specific agricultural activity" means the portion of the farming operation that is complained. For example, if the farm has a VPA permit for land application of manure, but complaint involves runoff from field to which manure is not applied, then answer is "No."

If "No" OR ~~A~~Uncertain go to question 6. If "Yes," dismiss complaint and inform complainant that we have no jurisdiction over complaints concerning water pollution from activities that are subject to a DEQ water permit.

6. Name and address of farmer whose operation is subject of complaint:

Phone Number(s): _____

County Name: _____

Special directions to farm/section of farm: _____

Name of Soil and Water Conservation District ("local District") in which complained-of agricultural activity located:

(VDACS Letterhead)

FORM 2
**NOTIFICATION TO DISTRICT OF COMPLAINT
AND REQUEST TO INVESTIGATE
AGRICULTURE STEWARDSHIP ACT**

TO: Directors, _____ Soil & Water
Conservation District

FROM: Commissioner of Agriculture and Consumer Services

THROUGH: _____
Agricultural Stewardship Coordinator

DATE: _____

RE: Complaint of Water Pollution from Agricultural Activity in Your
District (Complaint No.____)

We have received a complaint alleging that an agricultural activity in your District is causing or will cause water pollution. That agricultural activity is described in greater detail on the attached Complaint Tracking Form. Pursuant to ' 10.1-559.3 of the Code of Virginia, I hereby request that you determine the validity of the information in the complaint.

According to ' 10.1-559.3, you must advise me by the end of the fifth (5th) calendar day following the day on which you receive this request of your decision regarding whether or not you wish to determine the validity of the information in this complaint. (Our standard response form #3 can be used.)

The Agricultural Stewardship Act gives us only 21 days to complete investigations to determine the validity of complaints, so if you choose to investigate to determine the validity of the information in the complaint, I will need to receive your decision by the date of _____. If you choose to investigate, the standard investigation form #9 can be used.

Thank you for your consideration of this request. If you have any questions, please feel free to call me or my staff at 804/786-3538.

[District letterhead]

FORM 3
**DISTRICT'S DECISION REGARDING
REQUEST TO INVESTIGATE VALIDITY OF COMPLAINT
AGRICULTURAL STEWARDSHIP ACT**

TO: Commissioner of Agriculture and Consumer Services

FROM: _____
Soil & Water Conservation District

DATE: _____

RE: Complaint of Water Pollution from Agricultural Activity in Our
District (Complaint No. _____)

We have received your request regarding a complaint alleging that an agricultural activity in our District is causing or will cause water pollution by sedimentation, nutrient enrichment or toxins. That agricultural activity is described in greater detail on the attached copy of the first page of the corresponding Complaint Tracking Form. Pursuant to ' 10.1-559.3 of the Code of Virginia, I hereby notify you that this Soil & Water Conservation District _____ will _____ will not investigate to determine the validity of the information in that complaint.

Copy: Agricultural Stewardship Coordinator
Commissioner, VDACS

Case # _____

FORM 4
SITE VISITS AND PHONE CALLS
NOTES OF FOLLOW-UP

DATE	TYPE OF ACTIVITY

(Letterhead of VDACS or District, as appropriate)

FORM 5
FOLLOW-UP FORM OF PHONE CALL TO LANDOWNER

TO: _____

FROM: _____
Agricultural Stewardship Coordinator

DATE: _____

RE: Complaint of Water Pollution from Agricultural Activities on Your Farming
Operation. (Complaint # _____)

This letter is to follow-up on our phone conversation on _____, and to act as a reminder that we will enter your land to determine if the agricultural activity is causing or will cause water pollution on _____ around _____.

If we need to reschedule, please contact the office as soon as possible to see if we can arrange for an alternate time for our visit.

Enclosed please find information regarding the Agricultural Stewardship Act.

Copy: Local District SWCD

FORM 6
NOTIFICATION TO FARMER OF INVESTIGATION FINDINGS

TO: _____

FROM: J. Carlton Courter, III
Commissioner of Agriculture and Consumer Services

THROUGH: Agriculture Stewardship Coordinator

DATE: _____

RE: Complaint pursuant to the Agricultural Stewardship Act regarding your farming operation (COMPLAINT # _____)

After receiving a complaint alleging that an agricultural activity on your farm is causing or will cause water pollution by sedimentation, an investigation was performed on *(date)* by *(investigators name)* from the Virginia Department of Agriculture and Consumer Services. The findings from this investigation are as follows:

- ◆ The land cleared to expand pasture next to *State Rt. 000* in *Distant County* is allowing runoff to carry excessive amounts of sediment to a tributary of Your Creek. Soil becomes sediment after it enters water. [Sedimentation constitutes elements of "pollution" as defined in the Agricultural Stewardship Act. (See Section 10.1-559.1 of the Code of Virginia.)]

Several factors that contribute to this problem are:

- Lack of permanent vegetation next to creek
- Inadequate erosion control measures in disturbed drainage area
- High degree of slope and large watershed

In conclusion, this agricultural activity was found to be one that is causing and will cause water pollution and measures must be taken to correct the water pollution problem according to the Agricultural Stewardship Act. **You need to submit an Agriculture Stewardship Plan that addresses the water pollution problem within 60 days of receiving this notice (approximately date) to the Commissioner of Agriculture and Consumer Services and a copy to the local Soil and Water Conservation District.** A list of possible sources of assistance and the requirements for this plan are attached.

Plan Requirements

- ◆ Best Management Practices that will correct the water pollution problem
- ◆ An implementation schedule to begin within six months of receiving this notice (***approximate date***).
- ◆ Complete implementation within twelve months of receiving this notice (***approximate date***).

Possible assistance in plan development and cost-share

- ◆ Local Soil and Water Conservation District (phone number)
- ◆ Natural Resources Conservation Service (phone number)
- ◆ Local County Cooperative Extension (phone number)
- ◆ Virginia Department of Agriculture and Consumer Services
Hunter Richardson (804-786-2653) or Glenn Martin (804-786-2658)
- ◆ Private consultants in your area

If you would like to discuss this decision with the Commissioner, please contact the Commissioner's Office at 804-786-3501. If after this discussion, we are unable to reach agreement, you may appeal the Commissioner's decision to the Virginia Soil and Water Conservation Board. To appeal to the Soil and Water Conservation Board, contact Jack Frye with the Department of Conservation and Recreation at 804-786-6523. Mr. Frye will make the necessary arrangements with the Virginia Soil and Water Conservation Board. More information on farmers' rights and the ASA can be found in the informational packet that was sent with the original complaint notice. If you have any question about the investigation or the planing process, please call us at 804-786-2653.

copy: Local Soil and Water Conservation District

FORM 7
**NOTIFICATION TO FARMER OF APPROVAL OF
AGRICULTURAL STEWARDSHIP PLAN
FOR AGRICULTURAL STEWARDSHIP ACT**

TO: _____ (Name of Farmer)
_____ Farming Operation
_____ (Address)

DATE: _____

FROM: Commissioner of Agriculture and Consumer Services

THROUGH: Agricultural Stewardship Coordinator

RE: Complaint # _____

This memorandum is to notify you that the Commissioner of Agriculture and Consumer Services has approved your Natural Resources Conservation Service Plan as well as your proposed loafing barn with two provisions. First, manure collected in the loafing barn must be stored and land applied using sound agronomic practices to reduce the risk of environmental problems. Second, the excessive manure build-up in the old feeding areas must be removed and also be land applied.

Please be mindful of the implementation schedule to ensure that all dates are met. In your case, the Agriculture Stewardship Act (ASA) requires you to begin correcting the identified water pollution problem before *(date)*. Please notify the Stewardship Coordinators after you begin implementing your plan to arrange a six-month inspection. If, after this inspection, you have not completed all of the components need to prevent the water pollution identified in my letter dated _____. An 18-month inspection will be conducted to insure full implementation before *(date)*.

Thank you for cooperating with the Agricultural Stewardship Program. Through cooperation from producers like you, agriculture can address water pollution problems without the need for more stringent legislation and regulations.

cc. Local Soil and Water Conservation District

FORM 8
RESPONSE TO COMPLAINANT
REGARDING AGRICULTURAL STEWARDSHIP ACT

DATE: _____

TO: _____

FROM: Commissioner of Agriculture and Consumer Services

THROUGH: Agriculture Stewardship Coordinator

RE: Complaint of water pollution on a Dairy operation
(Complaint #_____)

An investigation was conducted after receiving your complaint alleging that a dairy cattle feedlot operation, located at the end of State Rout 000 in Distant County, was causing water pollution from excess nutrients (manure from feedlot) and sedimentation (erosion in lots). This investigation was performed on *(date)* by *(investigator's name)* from the Virginia Department of Agriculture and Consumer Services and *(investigator's name)* from a local Soil and Water Conservation District.

The findings during this investigation included both gully erosion and excess manure build-up next to a tributary of Happy Creek. This evidence does support the conclusion that this agricultural activity is causing and will cause water pollution. Therefore, the Commissioner of Agriculture and Consumer Services has determined this to be a founded complaint.

The farmer has developed a plan to prevent the water pollution problem from continuing. The plan has been reviewed by the Local Soil and Water Conservation District and has been approved by the Commissioner's Office. The law requires that the plan implementation begins by *(date)* and be completed by *(date)*.

Thank you for making us aware of this situation and for being patient as we address water pollution problems caused by agricultural activities.

copy: Local Soil and Water Conservation District

Complaint Number _____
Date of Complaint _____

FORM 9
**COMPLAINT INVESTIGATION FOR
AGRICULTURAL STEWARDSHIP ACT**

Investigator(s) Name/Agency: _____

Date of Investigation: _____

List of all present during investigation: _____

Description of complaint:

Did you find that the complained-of agricultural activity is subject to a VPA or VPDES permit?
Yes No

If yes, stop here and return this form to the Commissioner's Office.

Description of findings during investigation. *(Attach additional sheets if necessary):*

In your opinion, does the evidence support the claim that this agricultural activity is causing or will cause water pollution? Yes No

If no, please list reasons for your conclusion. *(Use additional sheets, if necessary.)*

Stop here and return this form to the Commissioner's Office or continue.

If yes, list all evidence that was collected onsite and other supporting data (e.g., pictures, water samples, aerial photographs with stream, and problem areas clearly identified, soil loss).

Complaint Number _____
Date of Complaint _____

FORM 10
STEWARDSHIP PLAN

Owner/Operator: _____

_____P

Statement of water pollution problem: _____

Solutions to the problems including Best Management Practices and implementation schedule.

<u>Solution(s)</u>	<u>Implementation Date(s)</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

ATTACHMENTS

- Aerial Photographs (can obtain from Farm Service Agency)
- Indicated on photo the affected water feature, problem area, and Best Management
- Practices Soils map (can obtain from Natural Resource Conservation Service or local Soil and Water Conservation District)

SIGNATURES:

Owner/Operator _____ Date _____

Soil and Water Conservation
District Representative _____ Date _____

Commissioner's Signature _____ Date _____

This planning form is only a guide. Other types of plans are acceptable providing the plan meets Agricultural Stewardship Act requirements.

